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RECEIVED

June 15, 1998

JUN 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

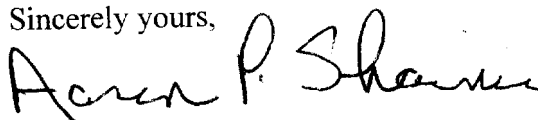
Re: James A. Kay, Jr.
WT Docket No. 94-147

Dear Ms. Salas:

Transmitted herewith, on behalf of James A. Kay, Jr., are an original and fourteen (14) copies of a Motion for Leave to File Petition for Extraordinary Relief in the above-captioned proceeding.

If there are any questions with respect to this matter, please communicate with the undersigned.

Sincerely yours,



Aaron P. Shainis
Robert J. Keller
Counsel for
JAMES A. KAY, JR.

Enclosure

cc: William E. Kennard, Chairman
Susan Ness, Commissioner
Harold Furchtgott-Roth, Commissioner
Michael K. Powell, Commissioner
Gloria Trisanti, Commissioner
Christopher J. Wright, General Counsel
John I. Riffer, Senior Ethics Counsel
H. Walker Feaster, III, Inspector General
Daniel Phythyon, Chief, Wireless Telecommunications Bureau

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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JUN 15 1998

In the matter of)

JAMES A. KAY, JR.)

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licenses in the Los Angeles, California area)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WT Docket No. 94-147

To: The Commission

**MOTION FOR LEAVE TO FILE
PETITION FOR EXTRAORDINARY RELIEF**

James A. Kay, Jr. ("Kay"), hereby respectfully moves the Commission for leave to submit his *Petition for Extraordinary Relief* ("Petition"). The body of the *Petition* was filed on Friday, June 12, 1998, and the *Attachments to the Petition for Extraordinary Relief* is are being filed today. Undersigned counsel have informally conferred with the counsel for the Wireless Telecommunications Bureau, and it was agreed that today, Monday, June 15, 1998, would be deemed the filing date for the entire pleading for purposes of calculating any responsive pleading dates.

Acceptance and consideration of this *Petition* is warranted, notwithstanding any procedural rules to the contrary, because Kay therein requests extraordinary relief designed to remedy extreme and severe due process violations in connection with this hearing. In Section II of the *Petition*, Kay details and fully documents numerous examples of irregularities, improprieties, and even illegalities in the investigation, designation, and prosecution of this case. These are not mere self-serving allegations; rather, Kay's charges are fully documented by documents subject to official notice, sworn affidavits, testimony given under oath, items that are not and will not be disputed, etc. Kay is not aware of any case in the history of the Commission in which a licensee has been forced to defend against license revocation proceedings in the face of such serious and fully documented allegations.

The primary relief requested by Kay is that the Commission initiate an investigation of these matters and, on its own motion, set aside the *Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing for Forfeiture*, 10 FCC Rcd 2062 (1994). Several alternative forms of relief are also requested. Kay respectfully acknowledges that Section 1.106 of the Commission's Rules allows a petition for reconsideration of a hearing designation order only "if, and insofar as, the petition relates to an adverse ruling with respect to petitioner's participation in the proceeding." 47 C.F.R. § 1.106(a)(1). Nevertheless, there are any number of provisions in the rules that authorize the Commission to take appropriate remedial actions either, *sua sponte* or upon motion, including the actions requested herein. Thus, Section 1.2 of the Commission's Rules provides: "The Commission may, in accordance with Section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty," 47 C.F.R. § 1.2. The Rules further provide, at Section 1.3: "Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." 47 C.F.R. § 1.3.

The Commission has, on prior occasions, effectively reconsidered and/or modified hearing designation orders notwithstanding the 1.106(a)(1) prohibition on reconsideration. Only recently, for example, the Commission entertained a petition for reconsideration of and in fact modified a hearing designation order. *Westel Samoa, Inc.*, 13 FCC Rcd 6342 (1998). Similarly, *Radio WAVS, Inc.*, 92 FCC 2d 1037 (1982), the Commission on its own motion (but after a request from the applicant) examined the record in a case where the presiding administrative law judge had declined to grant summary decision.

In the circumstances presented herein, there is ample justification for acceptance and consideration of the *Petition*.

WHEREFORE, it is respectfully requested that Kay be granted leave to submit, and that the Commission receive and fully consider, the *Petition for Extraordinary Relief*.

Respectfully submitted this 15th day of May, 1998

JAMES A. KAY, JR.

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CERTIFICATE OF SERVICE

I, Robert J. Keller, counsel for James A. Kay, Jr., hereby certify that on this 15th day of June, 1998, I caused copies of the foregoing **MOTION FOR LEAVE TO FILE PETITION FOR EXTRAORDINARY RELIEF** to be hand served (except as indicated) on the officials and parties in WT Docket No. 94-147, as follows:

HON RICHARD L SIPPEL
ADMINSTRATIVE LAW JUDGE
FEDERAL COMMUNICATIONS COMMISSION
2000 L ST NW STE 218
WASHINGTON DC 20554-0003

JOHN SCHAUBLE ESQ
ENFORCEMENT DIVISION
WIRELESS TELECOMMUNICAITONS BUREAU
FEDERAL COMMUNICATIONS COMMISSION
2025 M STREET NW STE 8308
WASHINGTON DC 20554-0002

(by mail)

WILLIAM H KNOWLES-KELLTT ESQ
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WIRELESS TELECOMMUNICAITONS BUREAU
FEDERAL COMMUNIATIONS COMMISSION
1270 FAIRFIELD RD
GETTYSBURG PA 17325-7245

By: _____

Robert J. Keller